

11 8 6
Nos. 87-2012, 87-2051, and 88-49

Supreme Court, U.S.
FILED
JUL 20 1988
BENJAMIN R. SPANGLER, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1988

NO. 87-2012
FW/PBS, INC., et al.,
Petitioners,

v.
CITY OF DALLAS, TEXAS, et al.,
Respondents.

NO. 87-2051
M.J.R., INC., et al.,
Petitioners,

v.
CITY OF DALLAS, TEXAS, et al.,
Respondents.

NO. 88-49
CALVIN BERRY, III, et al.,
Petitioners,

v.
CITY OF DALLAS, TEXAS, et al.,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

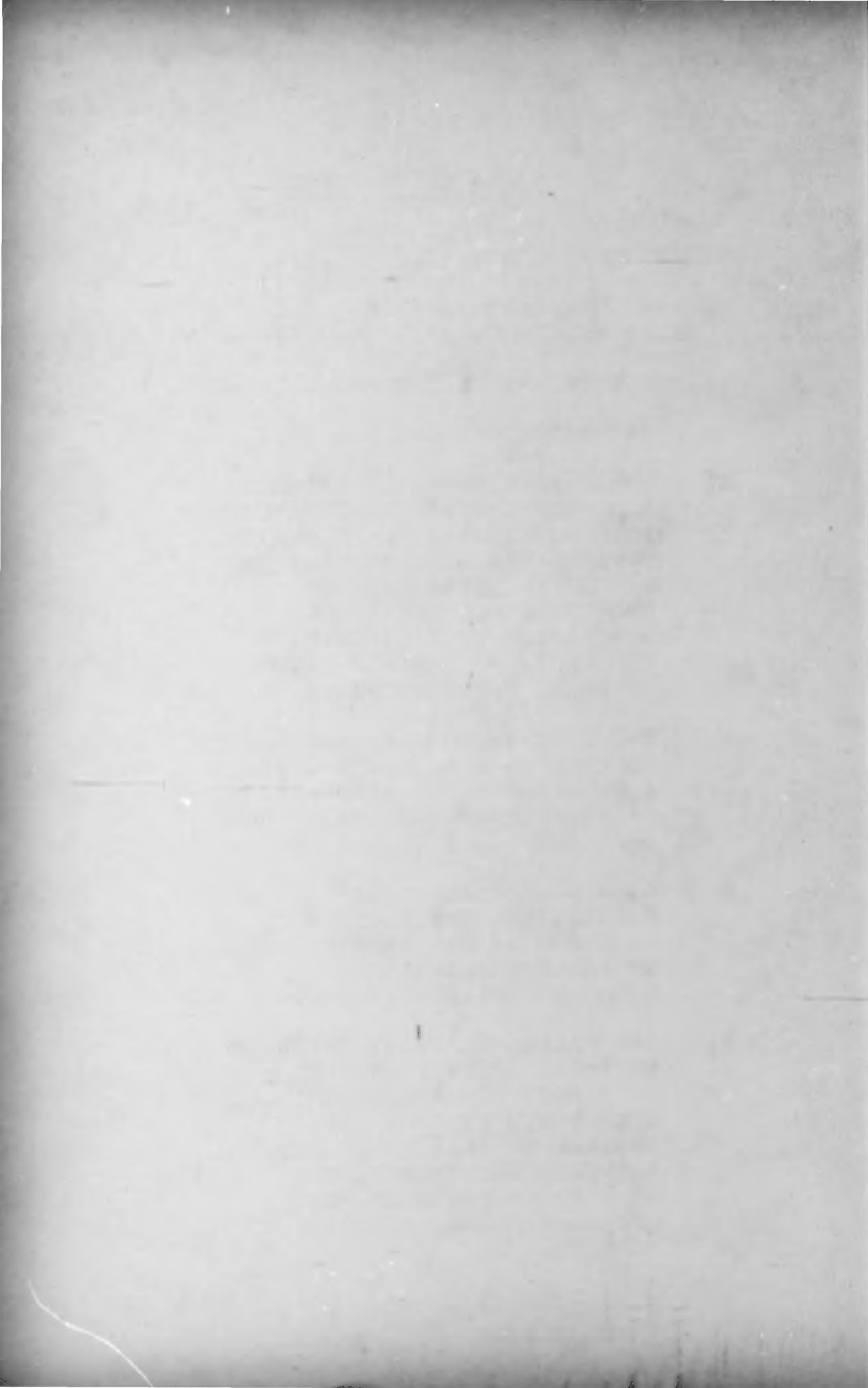
BRIEF OF AMICUS CURIAE
CHILDREN'S LEGAL FOUNDATION

BENJAMIN W. BULL
ALAN E. SEARS
LIN L. MUNSHIL
2845 E. Camelback Rd.
Suite 740
Phoenix, AZ 85016
(602)381-1322

Counsel of Record
Amicus Curiae

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	iii
MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.....	vii
INTEREST OF AMICUS CURIAE.....	1
I. INTRODUCTION.....	3
II. THE DALLAS SEXUALLY ORIENTED BUSINESS LICENSE REQUIREMENT DOES NOT IMPOSE AN UNCONSTITUTIONAL PRIOR RESTRAINT ON PROTECTED EXPRESSION BY PROVIDING FOR DENIAL OR REVOCATION OF A LICENSE ON THE BASIS OF CERTAIN PRIOR CRIMINAL CONVICTIONS.....	5
A. The License Requirement is Content-Neutral and Bears a Substantial Relationship to the Purpose of the Ordinance.....	8
B. As a Content-Neutral Regulation, the License Scheme Does Not Result in an Unconstitutional Prior Restraint.....	16
III. THE DALLAS SEXUALLY ORIENTED BUSINESS LICENSE ORDINANCE DOES NOT UNCONSTITUTIONALLY SINGLE OUT PERSONS AND BUSINESSES ENGAGED IN FIRST AMENDMENT ACTIVITIES FOR REGULATION CONTRARY TO ARCARA V. CLOUD BOOKS.....	25



IV. THE ORDINANCE PROVIDES
ADEQUATE PROCEDURAL SAFE-
GUARDS AND IS CONSISTENT
WITH THIS COURT'S DECISIONS.. 31

V. CONCLUSION..... 36

CERTIFICATE OF SERVICE..... 37

THE ORIGINAL PROPOSAL
ALONG WITH THE OTHER CASES
SHOULD BE IN CONSIDERATION
WITH THIS COURT'S DECISION
IN
CONSIDERATION
CENTRALITY OF THE CASE

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>106 Forsyth Corp. v. Bishop,</u> 482 F.2d 280, 281 (5th Cir. 1973).....	14,18
<u>Airport Bookstore, Inc. v. Jackson,</u> 248 S.E.2d 623 (Ga. 1978).....	18,30
<u>Arcara v. Cloud Books, Inc.,</u> 478 U.S. 697 (1986).....	17
<u>Bantam Books, Inc. v. Sullivan,</u> 372 U.S. 58 (1963).....	23
<u>Barrago v. City of Louisville,</u> 456 F.Supp. 30, 32 (W.D. Ky. 1978).....	18
<u>Bayside Enterprises, Inc. v.</u> <u>Carson,</u> 470 F.Supp. 1140, 1149 (M.D. Fla. 1979).....	32
<u>Chaplinsky v. New Hampshire,</u> 315 U.S. 568, 571-72 (1942).....	10
<u>City of Paducah v. Investment</u> <u>Entertainment,</u> 791 F.2d 463 (6th Cir. 1986).....	33
<u>City of Renton v. Playtime</u> <u>Theatres,</u> 475 U.S. 41 (1986).....	8
<u>Commonwealth v. Croaton Books,</u> 323 S.E.2d 86, 89 (Va. 1984).....	17
<u>Cox v. Louisiana,</u> 379 U.S. 559 (1965).....	27
<u>De Veau v. Braisted,</u> 363 U.S. 144, 158-59 (1960).....	14

TABLE OF CONTENTS

Page

Chapter

1. General Introduction 1

2. The History of the 10

3. The Development of the 20

4. The Role of the 30

5. The Importance of the 40

6. The Future of the 50

7. The Conclusion 60

8. The Appendix 70

9. The Bibliography 80

10. The Index 90

11. The Glossary 100

12. The List of Figures 110

13. The List of Tables 120

14. The List of References 130

<u>Dumas v. City of Dallas,</u> 648 F.Supp. 1061, 1082 (N.D. Tex. 1986).....	7
<u>Dun & Bradstreet v. Greenmoss Builders,</u> 472 U.S. 749, 758-9, n.5 (1985)...	10
<u>Entertainment Concepts, Inc. v. Maciejewski,</u> 631 F.2d 497 (7th Cir. 1980).....	33
<u>FCC v. Pacifica Foundation,</u> 438 U.S. 726, 743 (1978).....	10
<u>FW/PBS, Inc. v. City of Dallas,</u> 837 F.2d 1298, 1304 n. 19 (5th Cir. 1988).....	7
<u>Fort Wayne Books, Inc. v. Indiana,</u> U.S. , 103 L.Ed.2d 34, 109 S.Ct. 916 (1989).....	15
<u>Freedman v. Maryland,</u> 380 U.S. 51 (1965).....	11, 23 31
<u>Gateway Books v. Jackson,</u> 441 U.S. 952 (1979).....	18
<u>Genusa v. City of Peoria,</u> 619 F.2d 1203, 1212-13 (7th Cir. 1980).....	6, 13, 29
<u>Grayned v. City of Rockford,</u> 408 U.S. 104 (1972).....	27
<u>Kev, Inc. v. Kitsap County,</u> 793 F.2d 1053, 1060 n. 5 (9th Cir. 1986).....	13, 32
<u>Kingsley Books v. Brown,</u> 354 U.S. 436, 441-42 (1957).....	19

James V. Day of Dallas
1937-1938, 1939-1940, 1941-1942
1943-1944, 1945-1946, 1947-1948
1949-1950, 1951-1952, 1953-1954
1955-1956, 1957-1958, 1959-1960
1961-1962, 1963-1964, 1965-1966
1967-1968, 1969-1970, 1971-1972
1973-1974, 1975-1976, 1977-1978
1979-1980, 1981-1982, 1983-1984
1985-1986, 1987-1988, 1989-1990
1991-1992, 1993-1994, 1995-1996
1997-1998, 1999-2000, 2001-2002
2003-2004, 2005-2006, 2007-2008
2009-2010, 2011-2012, 2013-2014
2015-2016, 2017-2018, 2019-2020
2021-2022, 2023-2024, 2025-2026
2027-2028, 2029-2030, 2031-2032
2033-2034, 2035-2036, 2037-2038
2039-2040, 2041-2042, 2043-2044
2045-2046, 2047-2048, 2049-2050
2051-2052, 2053-2054, 2055-2056
2057-2058, 2059-2060, 2061-2062
2063-2064, 2065-2066, 2067-2068
2069-2070, 2071-2072, 2073-2074
2075-2076, 2077-2078, 2079-2080
2081-2082, 2083-2084, 2085-2086
2087-2088, 2089-2090, 2091-2092
2093-2094, 2095-2096, 2097-2098
2099-2100, 2101-2102, 2103-2104
2105-2106, 2107-2108, 2109-2110
2111-2112, 2113-2114, 2115-2116
2117-2118, 2119-2120, 2121-2122
2123-2124, 2125-2126, 2127-2128
2129-2130, 2131-2132, 2133-2134
2135-2136, 2137-2138, 2139-2140
2141-2142, 2143-2144, 2145-2146
2147-2148, 2149-2150, 2151-2152
2153-2154, 2155-2156, 2157-2158
2159-2160, 2161-2162, 2163-2164
2165-2166, 2167-2168, 2169-2170
2171-2172, 2173-2174, 2175-2176
2177-2178, 2179-2180, 2181-2182
2183-2184, 2185-2186, 2187-2188
2189-2190, 2191-2192, 2193-2194
2195-2196, 2197-2198, 2199-2200
2201-2202, 2203-2204, 2205-2206
2207-2208, 2209-2210, 2211-2212
2213-2214, 2215-2216, 2217-2218
2219-2220, 2221-2222, 2223-2224
2225-2226, 2227-2228, 2229-2230
2231-2232, 2233-2234, 2235-2236
2237-2238, 2239-2240, 2241-2242
2243-2244, 2245-2246, 2247-2248
2249-2250, 2251-2252, 2253-2254
2255-2256, 2257-2258, 2259-2260
2261-2262, 2263-2264, 2265-2266
2267-2268, 2269-2270, 2271-2272
2273-2274, 2275-2276, 2277-2278
2279-2280, 2281-2282, 2283-2284
2285-2286, 2287-2288, 2289-2290
2291-2292, 2293-2294, 2295-2296
2297-2298, 2299-2300, 2301-2302
2303-2304, 2305-2306, 2307-2308
2309-2310, 2311-2312, 2313-2314
2315-2316, 2317-2318, 2319-2320
2321-2322, 2323-2324, 2325-2326
2327-2328, 2329-2330, 2331-2332
2333-2334, 2335-2336, 2337-2338
2339-2340, 2341-2342, 2343-2344
2345-2346, 2347-2348, 2349-2350
2351-2352, 2353-2354, 2355-2356
2357-2358, 2359-2360, 2361-2362
2363-2364, 2365-2366, 2367-2368
2369-2370, 2371-2372, 2373-2374
2375-2376, 2377-2378, 2379-2380
2381-2382, 2383-2384, 2385-2386
2387-2388, 2389-2390, 2391-2392
2393-2394, 2395-2396, 2397-2398
2399-2400, 2401-2402, 2403-2404
2405-2406, 2407-2408, 2409-2410
2411-2412, 2413-2414, 2415-2416
2417-2418, 2419-2420, 2421-2422
2423-2424, 2425-2426, 2427-2428
2429-2430, 2431-2432, 2433-2434
2435-2436, 2437-2438, 2439-2440
2441-2442, 2443-2444, 2445-2446
2447-2448, 2449-2450, 2451-2452
2453-2454, 2455-2456, 2457-2458
2459-2460, 2461-2462, 2463-2464
2465-2466, 2467-2468, 2469-2470
2471-2472, 2473-2474, 2475-2476
2477-2478, 2479-2480, 2481-2482
2483-2484, 2485-2486, 2487-2488
2489-2490, 2491-2492, 2493-2494
2495-2496, 2497-2498, 2499-2500
2501-2502, 2503-2504, 2505-2506
2507-2508, 2509-2510, 2511-2512
2513-2514, 2515-2516, 2517-2518
2519-2520, 2521-2522, 2523-2524
2525-2526, 2527-2528, 2529-2530
2531-2532, 2533-2534, 2535-2536
2537-2538, 2539-2540, 2541-2542
2543-2544, 2545-2546, 2547-2548
2549-2550, 2551-2552, 2553-2554
2555-2556, 2557-2558, 2559-2560
2561-2562, 2563-2564, 2565-2566
2567-2568, 2569-2570, 2571-2572
2573-2574, 2575-2576, 2577-2578
2579-2580, 2581-2582, 2583-2584
2585-2586, 2587-2588, 2589-2590
2591-2592, 2593-2594, 2595-2596
2597-2598, 2599-2600, 2601-2602
2603-2604, 2605-2606, 2607-2608
2609-2610, 2611-2612, 2613-2614
2615-2616, 2617-2618, 2619-2620
2621-2622, 2623-2624, 2625-2626
2627-2628, 2629-2630, 2631-2632
2633-2634, 2635-2636, 2637-2638
2639-2640, 2641-2642, 2643-2644
2645-2646, 2647-2648, 2649-2650
2651-2652, 2653-2654, 2655-2656
2657-2658, 2659-2660, 2661-2662
2663-2664, 2665-2666, 2667-2668
2669-2670, 2671-2672, 2673-2674
2675-2676, 2677-2678, 2679-2680
2681-2682, 2683-2684, 2685-2686
2687-2688, 2689-2690, 2691-2692
2693-2694, 2695-2696, 2697-2698
2699-2700, 2701-2702, 2703-2704
2705-2706, 2707-2708, 2709-2710
2711-2712, 2713-2714, 2715-2716
2717-2718, 2719-2720, 2721-2722
2723-2724, 2725-2726, 2727-2728
2729-2730, 2731-2732, 2733-2734
2735-2736, 2737-2738, 2739-2740
2741-2742, 2743-2744, 2745-2746
2747-2748, 2749-2750, 2751-2752
2753-2754, 2755-2756, 2757-2758
2759-2760, 2761-2762, 2763-2764
2765-2766, 2767-2768, 2769-2770
2771-2772, 2773-2774, 2775-2776
2777-2778, 2779-2780, 2781-2782
2783-2784, 2785-2786, 2787-2788
2789-2790, 2791-2792, 2793-2794
2795-2796, 2797-2798, 2799-2800
2801-2802, 2803-2804, 2805-2806
2807-2808, 2809-2810, 2811-2812
2813-2814, 2815-2816, 2817-2818
2819-2820, 2821-2822, 2823-2824
2825-2826, 2827-2828, 2829-2830
2831-2832, 2833-2834, 2835-2836
2837-2838, 2839-2840, 2841-2842
2843-2844, 2845-2846, 2847-2848
2849-2850, 2851-2852, 2853-2854
2855-2856, 2857-2858, 2859-2860
2861-2862, 2863-2864, 2865-2866
2867-2868, 2869-2870, 2871-2872
2873-2874, 2875-2876, 2877-2878
2879-2880, 2881-2882, 2883-2884
2885-2886, 2887-2888, 2889-2890
2891-2892, 2893-2894, 2895-2896
2897-2898, 2899-2900, 2901-2902
2903-2904, 2905-2906, 2907-2908
2909-2910, 2911-2912, 2913-2914
2915-2916, 2917-2918, 2919-2920
2921-2922, 2923-2924, 2925-2926
2927-2928, 2929-2930, 2931-2932
2933-2934, 2935-2936, 2937-2938
2939-2940, 2941-2942, 2943-2944
2945-2946, 2947-2948, 2949-2950
2951-2952, 2953-2954, 2955-2956
2957-2958, 2959-2960, 2961-2962
2963-2964, 2965-2966, 2967-2968
2969-2970, 2971-2972, 2973-2974
2975-2976, 2977-2978, 2979-2980
2981-2982, 2983-2984, 2985-2986
2987-2988, 2989-2990, 2991-2992
2993-2994, 2995-2996, 2997-2998
2999-3000, 3001-3002, 3003-3004
3005-3006, 3007-3008, 3009-3010
3011-3012, 3013-3014, 3015-3016
3017-3018, 3019-3020, 3021-3022
3023-3024, 3025-3026, 3027-3028
3029-3030, 3031-3032, 3033-3034
3035-3036, 3037-3038, 3039-3040
3041-3042, 3043-3044, 3045-3046
3047-3048, 3049-3050, 3051-3052
3053-3054, 3055-3056, 3057-3058
3059-3060, 3061-3062, 3063-3064
3065-3066, 3067-3068, 3069-3070
3071-3072, 3073-3074, 3075-3076
3077-3078, 3079-3080, 3081-3082
3083-3084, 3085-3086, 3087-3088
3089-3090, 3091-3092, 3093-3094
3095-3096, 3097-3098, 3099-3100
3101-3102, 3103-3104, 3105-3106
3107-3108, 3109-3110, 3111-3112
3113-3114, 3115-3116, 3117-3118
3119-3120, 3121-3122, 3123-3124
3125-3126, 3127-3128, 3129-3130
3131-3132, 3133-3134, 3135-3136
3137-3138, 3139-3140, 3141-3142
3143-3144, 3145-3146, 3147-3148
3149-3150, 3151-3152, 3153-3154
3155-3156, 3157-3158, 3159-3160
3161-3162, 3163-3164, 3165-3166
3167-3168, 3169-3170, 3171-3172
3173-3174, 3175-3176, 3177-3178
3179-3180, 3181-3182, 3183-3184
3185-3186, 3187-3188, 3189-3190
3191-3192, 3193-3194, 3195-3196
3197-3198, 3199-3200, 3201-3202
3203-3204, 3205-3206, 3207-3208
3209-3210, 3211-3212, 3213-3214
3215-3216, 3217-3218, 3219-3220
3221-3222, 3223-3224, 3225-3226
3227-3228, 3229-3230, 3231-3232
3233-3234, 3235-3236, 3237-3238
3239-3240, 3241-3242, 3243-3244
3245-3246, 3247-3248, 3249-3250
3251-3252, 3253-3254, 3255-3256
3257-3258, 3259-3260, 3261-3262
3263-3264, 3265-3266, 3267-3268
3269-3270, 3271-3272, 3273-3274
3275-3276, 3277-3278, 3279-3280
3281-3282, 3283-3284, 3285-3286
3287-3288, 3289-3290, 3291-3292
3293-3294, 3295-3296, 3297-3298
3299-3300, 3301-3302, 3303-3304
3305-3306, 3307-3308, 3309-3310
3311-3312, 3313-3314, 3315-3316
3317-3318, 3319-3320, 3321-3322
3323-3324, 3325-3326, 3327-3328
3329-3330, 3331-3332, 3333-3334
3335-3336, 3337-3338, 3339-3340
3341-3342, 3343-3344, 3345-3346
3347-3348, 3349-3350, 3351-3352
3353-3354, 3355-3356, 3357-3358
3359-3360, 3361-3362, 3363-3364
3365-3366, 3367-3368, 3369-3370
3371-3372, 3373-3374, 3375-3376
3377-3378, 3379-3380, 3381-3382
3383-3384, 3385-3386, 3387-3388
3389-3390, 3391-3392, 3393-3394
3395-3396, 3397-3398, 3399-3400
3401-3402, 3403-3404, 3405-3406
3407-3408, 3409-3410, 3411-3412
3413-3414, 3415-3416, 3417-3418
3419-3420, 3421-3422, 3423-3424
3425-3426, 3427-3428, 3429-3430
3431-3432, 3433-3434, 3435-3436
3437-3438, 3439-3440, 3441-3442
3443-3444, 3445-3446, 3447-3448
3449-3450, 3451-3452, 3453-3454
3455-3456, 3457-3458, 3459-3460
3461-3462, 3463-3464, 3465-3466
3467-3468, 3469-3470, 3471-3472
3473-3474, 3475-3476, 3477-3478
3479-3480, 3481-3482, 3483-3484
3485-3486, 3487-3488, 3489-3490
3491-3492, 3493-3494, 3495-3496
3497-3498, 3499-3500, 3501-3502
3503-3504, 3505-3506, 3507-3508
3509-3510, 3511-3512, 3513-3514
3515-3516, 3517-3518, 3519-3520
3521-3522, 3523-3524, 3525-3526
3527-3528, 3529-3530, 3531-3532
3533-3534, 3535-3536, 3537-3538
3539-3540, 3541-3542, 3543-3544
3545-3546, 3547-3548, 3549-3550
3551-3552, 3553-3554, 3555-3556
3557-3558, 3559-3560, 3561-3562
3563-3564, 3565-3566, 3567-3568
3569-3570, 3571-3572, 3573-3574
3575-3576, 3577-3578, 3579-3580
3581-3582, 3583-3584, 3585-3586
3587-3588, 3589-3590, 3591-3592
3593-3594, 3595-3596, 3597-3598
3599-3600, 3601-3602, 3603-3604
3605-3606, 3607-3608, 3609-3610
3611-3612, 3613-3614, 3615-3616
3617-3618, 3619-3620, 3621-3622
3623-3624, 3625-3626, 3627-3628
3629-3630, 3631-3632, 3633-3634
3635-3636, 3637-3638, 3639-3640
3641-3642, 3643-3644, 3645-3646
3647-3648, 3649-3650, 3651-3652
3653-3654, 3655-3656, 3657-3658
3659-3660, 3661-3662, 3663-3664
3665-3666, 3667-3668, 3669-3670
3671-3672, 3673-3674, 3675-3676
3677-3678, 3679-3680, 3681-3682
3683-3684, 3685-3686, 3687-3688
3689-3690, 3691-3692, 3693-3694
3695-3696, 3697-3698, 3699-3700
3701-3702, 3703-3704, 3705-3706
3707-3708, 3709-3710, 3711-3712
3713-3714, 3715-3716, 3717-3718
3719-3720, 3721-3722, 3723-3724
3725-3726, 3727-3728, 3729-3730
3731-3732, 3733-3734, 3735-3736
3737-3738, 3739-3740, 3741-3742
3743-3744, 3745-3746, 3747-3748
3749-3750, 3751-3752, 3753-3754
3755-3756, 3757-3758, 3759-3760
3761-3762, 3763-3764, 3765-3766
3767-3768, 3769-3770, 3771-3772
3773-3774, 3775-3776, 3777-3778
3779-3780, 3781-3782, 3783-3784
3785-3786, 3787-3788, 3789-3790
3791-3792, 3793-3794, 3795-3796
3797-3798, 3799-3800, 3801-3802
3803-3804, 3805-3806, 3807-3808
3809-3810, 3811-3812, 3813-3814
3815-3816, 3817-3818, 3819-3820
3821-3822, 3823-3824, 3825-3826
3827-3828, 3829-3830, 3831-3832
3833-3834, 3835-3836, 3837-3838
3839-3840, 3841-3842, 3843-3844
3845-3846, 3847-3848, 3849-3850
3851-3852, 3853-3854, 3855-3856
3857-3858, 3859-3860, 3861-3862
3863-3864, 3865-3866, 3867-3868
3869-3870, 3871-3872, 3873-3874
3875-3876, 3877-3878, 3879-3880
3881-3882, 3883-3884, 3885-3886
3887-3888, 3889-3890, 3891-3892
3893-3894, 3895-3896, 3897-3898
3899-3900, 3901-3902, 3903-3904
3905-3906, 3907-3908, 3909-3910
3911-3912, 3913-3914, 3915-3916
3917-3918, 3919-3920, 3921-3922
3923-3924, 3925-3926, 3927-3928
3929-3930, 3931-3932, 3933-3934
3935-3936, 3937-3938, 3939-3940
3941-3942, 3943-3944, 3945-3946
3947-3948, 3949-3950, 3951-3952
3953-3954, 3955-3956, 3957-3958
3959-3960, 3961-3962, 3963-3964
3965-3966, 3967-3968, 3969-3970
3971-3972, 3973-3974, 3975-3976
3977-3978, 3979-3980, 3981-3982
3983-3984, 3985-3986, 3987-3988
3989-3990, 3991-3992, 3993-3994
3995-3996, 3997-3998, 3999-4000
4001-4002, 4003-4004, 4005-4006
4007-4008, 4009-4010, 4011-4012
4013-4014, 4015-4016, 4017-4018
4019-4020, 4021-4022, 4023-4024
4025-4026, 4027-4028, 4029-4030
4031-4032, 4033-4034, 4035-4036
4037-4038, 4039-4040, 4041-4042
4043-4044, 4045-4046, 4047-4048
4049-4050, 4051-4052, 4053-4054
4055-4056, 4057-4058, 4059-4060
4061-4062, 4063-4064, 4065-4066
4067-4068, 4069-4070, 4071-4072
4073-4074, 4075-4076, 4077-4078
4079-4080, 4081-4082, 4083-4084
4085-4086, 4087-4088, 4089-4090
4091-4092, 4093-4094, 4095-4096
4097-4098, 4099-4100, 4101-4102
4103-4104, 4105-4106, 4107-4108
4109-4110, 4111-4112, 4113-4114
4115-4116, 4117-4118, 4119-4120
4121-4122, 4123-4124, 4125-4126
4127-4128, 4129-4130, 4131-4132
4133-4134, 4135-4136, 4137-4138
4139-4140, 4141-4142, 4143-4144
4145-4146, 4147-4148, 4149-4150
4151-4152, 4153-4154, 4155-4156
4157-4158, 4159-4160, 4161-4162
4163-4164, 4165-4166, 4167-4168
4169-4170, 4171-4172, 4173-4174
4175-4176, 4177-4178, 4179-4180
4181-4

<u>Kovas v. Cooper,</u> 336 U.S. 77 (1948).....	27
<u>NAACP v. Claiborne Hardware,</u> 458 U.S. 886 (1982).....	22
<u>Near v. Minnesota,</u> 283 U.S. 697 (1931).....	20
<u>Nebraska Press Ass'n v. Stewart,</u> 427 U.S. 539 (1976).....	23
<u>New York Times Co. v. Sullivan,</u> 376 U.S. 254, 270 (1964).....	24
<u>New York Times Co. v. United States,</u> 403 U.S. 713 (1971).....	23
<u>O'Day v. King County,</u> 749 P.2d 142 (Wash. 1988).....	30
<u>Organization for a Better Austin v. Keefe,</u> 402 U.S. 415 (1971).....	23
<u>Police Dept., of Chicago v. Mosley,</u> 408 U.S. 92, 95-96 (1972).....	24
<u>SDJ, Inc. v. City of Houston,</u> 636 F.Supp. 1359, 1368 (N.D. Tex. 1986), aff'd 837 F.2d 1268 (5th Cir. 1988).....	30
<u>Schope v. State,</u> 647 S.W.2d 675 (Tex.Civ.App. 1982).....	30
<u>Shuttlesworth v. City of Birmingham,</u> 394 U.S. 147 150-51 (1969).....	6
<u>Southeastern Promotions, Ltd. v. Conrad,</u> 420 U.S. 546 (1975).....	23

<u>State ex rel. Kidwell v. U.S.</u> <u>Marketing, Inc.,</u> 631 P.2d 622 (Idaho 1981).....	25
<u>Tyson & Brother - United Theatre</u> <u>Ticket Offices, Inc. v. Banton,</u> 273 U.S. 418, 430 (1927).....	6
<u>Vance v. Universal Amusement Co.,</u> 445 U.S. 308 (1980).....	22
<u>Virginia Pharmacy Board v.</u> <u>Virginia Citizens Consumer</u> <u>Council, Inc.,</u> 425 U.S. 748, 771 (1976).....	29
<u>Wall Distributors, Inc. v. City</u> <u>of Newport News,</u> 782 F.2d 1165, 1171 (4th Cir. 1986).....	30
<u>Young v. American Mini Theatres,</u> 427 U.S. 50, 62 (1976).....	6

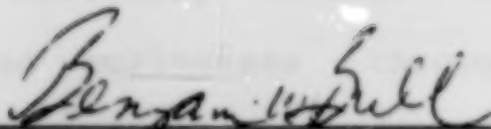
State of New York
County of New York
In SENATE
January 11, 1901
The People of the State of New York,
Represented in Senate and Assembly,
Do hereby certify that
The following is a true and correct
copy of the report of the
Commissioners of the
Department of Education,
for the year ending
June 30, 1900.
Attest:
Governor,
New York.

MOTION FOR LEAVE TO FILE
BRIEF AMICUS CURIAE

Children's Legal Foundation, Inc. (CLF), respectfully moves for leave to file the attached brief amicus curiae. The consent of the attorney for Respondents has been obtained. The consent of the attorney for Petitioner was requested telephonically. He failed to respond, so it is assumed that consent is refused.

The interest of the amicus curiae is set out below.

Respectfully submitted,



BENJAMIN W. BULL
Counsel for Children's
Legal Foundation

2845 E. Camelback Road
Suite 740
Phoenix, AZ 85016
(602) 381-1322

REPORT FOR THE YEAR 1911
OF THE
UNITED STATES DEPARTMENT OF AGRICULTURE

The following report was prepared by the
Bureau of Plant Industry, United States
Department of Agriculture, for the
year 1911. It contains a summary of
the work of the Bureau during the
year, and a list of the publications
issued by the Bureau during the year.
The report is published in the
Bureau of Plant Industry, United States
Department of Agriculture, for the
year 1911.

The following is a list of the
publications issued by the Bureau
of Plant Industry, United States
Department of Agriculture, for the
year 1911.

Publications Issued

1. The following is a list of the
publications issued by the Bureau
of Plant Industry, United States
Department of Agriculture, for the
year 1911.

2. The following is a list of the
publications issued by the Bureau
of Plant Industry, United States
Department of Agriculture, for the
year 1911.

INTEREST OF AMICUS CURIAE

Children's Legal Foundation, Inc., formerly Citizens for Decency through Law, Inc., is a non-profit legal organization founded in 1957 by attorney Charles H Keating, Jr. Mr. Keating was a member of the 1970 Presidential Commission on Obscenity and Pornography. CLF exists to assist public officials in the enforcement and drafting of constitutional obscenity and pornography laws. It also provides legal assistance to cities and counties seeking to eradicate the "secondary effects" of sexually oriented businesses through zoning ordinances. CLF also provides public information on legal and social issues related to pornography. CLF has a legal staff of attorneys practicing exclusively in the First Amendment area.

REPORT OF THE

COMMISSIONER OF THE

LAND OFFICE

FOR THE YEAR 1881

AND FOR THE YEAR 1882

AND FOR THE YEAR 1883

AND FOR THE YEAR 1884

AND FOR THE YEAR 1885

AND FOR THE YEAR 1886

AND FOR THE YEAR 1887

AND FOR THE YEAR 1888

AND FOR THE YEAR 1889

AND FOR THE YEAR 1890

AND FOR THE YEAR 1891

AND FOR THE YEAR 1892

AND FOR THE YEAR 1893

AND FOR THE YEAR 1894

AND FOR THE YEAR 1895

AND FOR THE YEAR 1896

AND FOR THE YEAR 1897

AND FOR THE YEAR 1898

AND FOR THE YEAR 1899

AND FOR THE YEAR 1900

CLF attorneys assisted in the drafting of the challenged Dallas ordinance, and have drafted numerous other similar ordinances. CLF has filed more than 50 briefs in the United States Supreme Court and has participated in trials and appeals in more than 40 states. It has more than 120 affiliated chapters across the nation representing over 100,000 supporters.

Children's Legal Foundation is profoundly concerned about the ability of communities to regulate illegal conduct and public health hazards created by sexually oriented businesses. It believes that the Dallas ordinance is a constitutional method of combatting these problems, and is necessary to the maintenance of a society where families and children are safe to walk the streets of their cities.

The average salary in the district
of the Shanghai British Consulate, and
have a total income of about 100,000
sterling. It has been said that the
British in the United States Consulate
have a salary of about 10,000 and
are paid in gold or silver. It has
been said that the British Consulate
in the United States has a salary of
100,000.

William's last Consulate in
London was about the same
of consulates for British subjects
and public health agents
and is usually around 10,000.
It follows that the British Consulate
in London is about 10,000
sterling, and is usually in the
vicinity of 10,000 sterling.
and is usually in the vicinity of 10,000
sterling.

I. INTRODUCTION

A strong First Amendment is perhaps our nation's most vital guarantor of continued liberty. Any legislative incursion into freedom of speech must therefore be closely scrutinized. Nevertheless, the mere invocation of the terms "prior restraint" and "free speech violation" should not settle the issue. This Court must first determine whether speech rights are truly at stake.

Petitioners would like this Court to focus exclusively on the important and grand principles of the First Amendment. Amicus Curiae CLF respectfully suggests that this Court would be better served in directing its attention to the cold, hard, sordid facts relevant to this case. Those facts relate to the harmful secondary effects flowing from the illegal conduct occurring on the premises of sexually

oriented businesses. This type of ordinance is directed at those effects, and not at speech.

The truth is that these sexually oriented establishments are not in the business of communicating ideas, they are in the business of communicating diseases to the community. Their owners do not care about free speech, but about fast cash. They are in the business of catering to the base sexual gratifications of others, for profit. That desire for immediate gratification is what leads "customers" of sexually oriented businesses to engage in dubious, often illegal behavior on the premises.

CLF requests that this Court take a few moments to review the Appendices to this brief, which are transcriptions of videotapes relating to the interior of these establishments. These videotapes

graphically depict the "atmosphere" of a typical sexually oriented business: the male and female prostitutes turning tricks 24 hours per day; the overpowering smell of bodily fluids; the semen, urine and feces on the floors and walls; the anonymous sexual activity occurring through holes in the wall, etc. That is what this case is truly about. For the sake of the community's health, morals, safety and general welfare, these breeding grounds for the transmission of sexual diseases must be closely regulated.

II. THE DALLAS SEXUALLY ORIENTED BUSINESS LICENSE REQUIREMENT DOES NOT IMPOSE AN UNCONSTITUTIONAL PRIOR RESTRAINT ON PROTECTED EXPRESSION BY PROVIDING FOR DENIAL OR REVOCATION OF A LICENSE ON THE BASIS OF CERTAIN PRIOR CRIMINAL CONVICTIONS.

Petitioners assert that the provisions of the Ordinance allowing denial of a license to a person with

certain specified convictions act as an unconstitutional restraint on expression. This contention is without merit.

There is clearly no constitutional impediment to requiring sexually oriented businesses to obtain licenses.¹ The Ordinance denies licenses to persons convicted of certain crimes that are related to the crime-control intent of

¹Young v. American Mini Theatres, 427 U.S. 50, 62 (1976) ("The mere fact that the commercial exploitation of material protected by the First Amendment is subject to . . . licensing requirements is not sufficient reason for invalidating these ordinances"); Shuttlesworth v. City of Birmingham, 394 U.S. 147 150-51 (1969); Tyson & Brother - United Theatre Ticket Offices, Inc. v. Banton, 273 U.S. 418, 430 (1927) ("The authority to regulate the conduct of a business or to require a license, comes from a branch of the police power ..."). See also Genusa v. City of Peoria, 619 F.2d 1203, 1212-13 (7th Cir. 1980) (court relied on Young v. American Mini Theatres to uphold license requirement for operation of adult bookstores).

the law.² Individuals convicted of misdemeanors become eligible for a license two years after conviction or end of confinement, whichever is later; and for felonies or multiple misdemeanors the period is five years. FW/PBS, Inc. v. City of Dallas, 837 F.2d 1298, 1305 n.23 (5th Cir. 1988); Dumas v. City of Dallas, 648 F.Supp. 1061 (N.D. Tex. 1986). Petitioners argue that this licensing requirement acts as an unconstitutional prior restraint on the expressive activities of those

²These are prostitution, obscenity, sale, distribution, or display of harmful material to a minor, sexual performance by a child, possession of child pornography, public lewdness, indecent exposure, indecency with a child, sexual assault, aggravated sexual assault, incest, solicitation of a child, and harboring a runaway child. FW/PBS, Inc. v. City of Dallas, 837 F.2d 1298, 1304 n.19 (5th Cir. 1988); Dumas v. City of Dallas, 648 F.Supp. 1061, 1082 (N.D. Tex. 1986).

denied a license for past criminal behavior. This argument is utterly without merit.

A. The License Requirement is Content-Neutral and Bears a Substantial Relationship to the Purpose of the Ordinance.

Like the Renton ordinance in City of Renton v. Playtime Theatres, 475 U.S. 41 (1986), the Dallas Ordinance is content-neutral. The Dallas City Council adopted the Ordinance after making a number of factual findings. It found that crime rates are 90% higher in adult districts. The Council concluded that safety required regulation of sexually oriented businesses because they "are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature," and because there had been a substantial number of arrests for sex-related crimes near these

businesses. They also found convincing evidence that these businesses cause "urban blight" and decreased property values. FW/PBS, 837 F.2d at 1301. Indeed the Ordinance recites that its purpose is to "promote health, safety and morals," and to prevent the "continued concentration of sexually oriented businesses." It disclaims any purpose to deny "access by adults to sexually oriented materials protected by the First Amendment." The City also considered studies of other cities regarding the relationship among concentrations of sexually oriented businesses, crime, and property values. In order to prevent increased crime, blighting, and declining property values, the Ordinance was enacted. Id. at 300.

Thus, it is content-neutral in the same way as the Detroit ordinance in

Young v. American Mini Theatres, supra, and the Renton ordinance in City of Renton. These two cases recognize that a city may regulate the effects of sexually oriented businesses without engaging in content-based regulation. They also hold that sexually explicit materials enjoy less First Amendment protection than other kinds of speech. City of Renton, 475 U.S. at 49 n.2, quoting American Mini Theatres, 427 U.S. at 70 (sexually explicit speech is afforded the lowest rung of First Amendment protection).³ And because

³This is consistent with other related cases. Patently offensive references to sexual organs and activities "surely lie at the periphery of First Amendment concern." FCC v. Pacifica Foundation, 438 U.S. 726, 743 (1978); and see Chaplinsky v. New Hampshire, 315 U.S. 568, 571-72 (1942). More recently, the Court in Dun & Bradstreet v. Greenmoss Builders, 472 U.S. 749, 758-9, n.5 (1985), observed
(Footnote Continued)

the Ordinance, like the City of Renton ordinance, regulates only the "secondary effects" of sexually oriented businesses, it need only meet the standards applicable to time, place, and manner restrictions. It need not comply with more stringent limits on regulation aimed at content of speech such as those discussed in Freedman v. Maryland, 380 U.S. 51 (1965). Like the ordinance in City of Renton, this Court requires only that the Dallas Ordinance be "designed to serve a substantial governmental interest" and allow for "reasonable alternative avenues of communication." City of Renton, 475 U.S. at 50.

(Footnote Continued)

that, "We have long recognized that not all speech is of equal First Amendment importance . . . [c]ertain kinds of speech are less central to the interest of the First Amendment than others..."

Since this Court did not grant a writ of certiorari on the question of whether the Ordinance provides "reasonable alternative avenues of communication," the issue before this Court is whether the licensing scheme is "designed to serve a substantial governmental interest." It clearly does. Like the City of Renton ordinance, the Dallas Ordinance is designed to serve the City's interest in maintaining "the quality of urban life." Id. at 50. This interest is advanced even though the licensing scheme may regulate aspects of the businesses' operations other than location. The kind of speech affected by the Renton license requirement and the city's justification for enforcing it are the same as for the Dallas Ordinance's locational zoning rules. Whether a license is denied because the business

is improperly located or because the business is improperly maintained, the effect is the same -- the operator must refrain from the activity. His only alternative is to comply with the ordinance and obtain a license. Genusa v. City of Peoria, 619 F.2d 1203, 1212 (7th Cir. 1980) (licensing requirements are to be treated under the same analysis as zoning); Kev, Inc. v. Kitsap County, 793 F.2d 1053, 1060 and 1060 n. 5 (licensing requirement for content-neutral nude dancing ordinance tested under "time, place, and manner" analysis). Indeed, the "time, place, and manner" doctrine has never been limited to regulation of "place." FW/PBS, Inc., 837 F.2d at 1304.

The City's findings amply demonstrated a compelling interest in limiting the involvement of specified convicted persons in the operation of

sexually oriented businesses. They documented the strong relationship between sexually-oriented businesses and sexually related crimes. And the City established a compelling justification for barring those prone to such crimes from the management of these businesses.

Moreover, the City's findings are supported by the accepted rule that the government may attach to criminal convictions disabilities aimed at preventing recidivism. See De Veau v. Braisted, 363 U.S. 144, 158-59 (1960) (plurality opinion) ("Barring convicted felons from certain employments is a familiar legislative device to insure against corruption in specified, vital areas."); 106 Forsyth Corp. v. Bishop, 482 F.2d 280, 281 (5th Cir. 1973) (per curiam) (holding that the First Amendment permits revocation of theatre license for violation of law against

sexually explicit screenings), cert. denied, 422 U.S. 1044 (1975). Indeed the Supreme Court's recent decision in Fort Wayne Books, Inc. v. Indiana, ___ U.S. ___, 103 L.Ed.2d 34, 109 S.Ct. 916 (1989), reaffirmed this doctrine emphatically. There the Court upheld closure, and forfeiture to the state, of an entire bookstore as punishment for an obscenity conviction. The Court rejected an argument similar to Petitioners' -- that closure of a sexually oriented business as punishment for an obscenity RICO conviction was an unconstitutional prior restraint. The Court held that the restraint on presumptively protected speech activities was not an unconstitutional prior restraint. And see discussion FW/PBS, Inc., 837 F.2d at 1305 (occupational limitations frequently follow criminal conviction, and can

include First Amendment activities such as labor organizing).

The license ineligibility resulting from certain convictions is clearly suitably tailored to achieve the stated purpose of the Ordinance. Ineligibility results only from offenses that are related to the kinds of criminal activity associated with sexually oriented businesses.⁴

B. As a Content-Neutral Regulation, the License Scheme Does Not Result in an Unconstitutional Prior Restraint.

⁴The district court scrutinized the list of crimes that would make an applicant ineligible for a license and invalidated those it found to have no relationship to the purpose of the Ordinance. These offenses include kidnapping, robbery, bribery, controlled substances violations, and "organized criminal activities." Dumas, 648 F.Supp. at 1074.

Where, as in the instant case, the purpose of the license restriction is unrelated to the incidental prohibition on expressive conduct, no unconstitutional prior restraint occurs. Arcara v. Cloud Books, Inc., 478 U.S. 697 (1986), is squarely on point. There the Court held that a sexually related business could be closed when management was aware of sexual behavior on the premises, in violation of law. Id. at 702. As in the instant case, the criminal conduct was prostitution. The Court made clear that where the purpose of the statute is unrelated to the suppression of speech (i.e., content-neutral), the incidental restraint on expressive conduct is not unconstitutional. And see Commonwealth v. Croaton Books, 323 S.E.2d 86, 89 (Va. 1984) (upheld closure of sexually oriented business based on evidence of

When it is found that the
purpose of the proposed transaction is
to transfer to the transferee the
entire or substantial part of the
assets of the transferor, the transferor

shall be deemed to have sold the assets
to the transferee at their fair market
value, and the transferee shall be deemed
to have purchased the assets at their
fair market value. This rule shall apply
whether the assets are sold or transferred
by a corporation, partnership, or individual.

For purposes of this section, the fair
market value of an asset shall be the
price at which the asset could be sold
on the open market at the time of the
transfer. The fair market value of an
asset shall be determined by reference to
the prices at which similar assets have
been sold in the open market.

This section shall not apply to a transfer
of an asset to a transferee if the transfer
is made for the purpose of satisfying a
claim against the transferor. This section
shall not apply to a transfer of an asset
to a transferee if the transfer is made
for the purpose of effecting a reorganization
of the transferor's business.

illegal homosexual activity on the premises). If violation of law by a licensee may permissibly justify closure, it follows inescapably that one who has been convicted of a sex-related crime may be denied a license. See 106 Forsyth Corp. v. Bishop, 482 F.2d 280, 281 (5th Cir. 1973), cert. denied, 422 U.S. 1044 (1975); Barrago v. City of Louisville, 456 F.Supp. 30, 32 (W.D. Ky. 1978); Airport Bookstore, Inc. v. Jackson, 248 S.E.2d 623 (Ga. 1978), cert. denied sub. nom. Gateway Books v. Jackson, 441 U.S. 952 (1979). One intent of the Ordinance is to prevent crime; its purpose is not to suppress speech. Incidental impact on expressive conduct is not an unconstitutional prior restraint. Arcara, supra.

Indeed, merely alleging as Petitioner does that something is an unconstitutional prior restraint on free

speech does not advance this Court's inquiry in any meaningful way. As this Court stated in Kingsley Books v. Brown, 354 U.S. 436, 441-42 (1957):

"The phrase 'prior restraint' is not a self-wielding sword. Nor can it serve as a talismanic test. The duty of closer analysis and critical judgment in applying the thought behind the phrase has thus been authoritatively put by one who brings weighty learning to his support of constitutionally protected liberties: 'What is needed,' writes Professor Paul A. Freund, 'is a pragmatic assessment of its operation in the particular circumstances. The generalization that prior restraint is particularly obnoxious in civil liberties cases must yield to more particularistic analysis.' The Supreme Court and Civil Liberties, 4 Vand.L.Rev. 533, 539."

Analyzing the instant case in this way, as suggested by the Court in Kingsley Books, is useful. If a bookseller, having fallen behind on his property taxes, loses his business license and is



forced to close his store, it is absurd for him to complain that the city has imposed an unlawful prior restraint upon his bookselling activities. If a bookseller is convicted of the crime of distributing obscene materials, child pornography, or prostitution, he may be imprisoned. But it is absurd for him to argue that his incarceration constitutes a prior restraint on his ability to disseminate protected speech, even though his speech is quite clearly restrained by his inability to operate the bookstore. The same is true in the instant case because the restraint on expressive activities is incidental to, and not the purpose of, the Ordinance. And see Arcara, supra

Contrasting Near v. Minnesota, 283 U.S. 697 (1931), relied on by Petitioners, with the instant statute is instructive. The State of Minnesota had

commenced a statutory nuisance abatement action against Near and his newspaper, alleging it to be "malicious, scandalous and defamatory." After a trial, the district court found that the defendants did regularly publish a malicious, scandalous and defamatory newspaper, and that such newspaper was therefore subject to abatement as a nuisance. The court also perpetually enjoined the defendants "from producing, editing, publishing, circulating, having in their possession, selling or giving away any publication whatsoever which is a malicious, scandalous or defamatory newspaper, as defined by law." Id. at 706. The Supreme Court held, of course, that such an injunction constituted an impermissible prior restraint. The Court placed great emphasis on the fact that the object of the Minnesota statute

was to suppress the offending newspaper and to censor the offending publisher.

There are a number of distinctions between the Near case and the instant case, not the least of which is that Near dealt with speech critical of public officials rather than speech of a sexually explicit nature.⁵ Most significantly, however, the Near injunction, as well as the injunction in Vance v. Universal Amusement Co., 445 U.S. 308 (1980), was based on the content of the publication. In the case of license revocation for conviction of a crime or non-payment of taxes, or imprisonment for conviction of a crime,

⁵ Sexually explicit speech is afforded the lowest rung of First Amendment protection. City of Renton, 475 U.S. at 49 n.2; Young v. American Mini Theatres, 427 U.S. at 70. Political speech is on the highest rung. NAACP v. Claiborne Hardware, 458 U.S. 886 (1982).

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

and the appearance of the following

the incidental restraint on future expression is not based on the content of that expression.⁶

"[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter or its content. . . . The essence of this forbidden censorship is content control. Any restriction on expressive activity because of its content would completely undercut the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open.'"

⁶The typical prior restraint case deals with the government's effort to censor future expression based on its content. See, e.g., Nebraska Press Ass'n v. Stewart, 427 U.S. 539 (1976); Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975); New York Times Co. v. United States, 403 U.S. 713 (1971); Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971); Freedman v. Maryland, 380 U.S. 51 (1965); Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963).

Police Dept., of Chicago v. Mosley, 408 U.S. 92, 95-96 (1972), quoting New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964). (Emphasis added, citations omitted.) The Ordinance, including the licensing regulation, is a time, place, and manner statute which is content-neutral. Its purpose is not content control but the elimination of crime, blight, and reduction of property values, which are the secondary effects of sexually oriented businesses. The focus of the statutory measure is on elimination of the secondary effects, unrelated to the content of the sexually explicit speech sold in the businesses. And like closure incidentally resulting from an illegal activity on the premises -- such as prostitution (Arcara, supra) -- the denial of a license to operate because of that conviction is not an unconstitutional prior restraint. Its

purpose is not to suppress speech but to prevent increased criminal behavior in and around sexually oriented businesses. See, e.g., State ex rel. Kidwell v. U.S. Marketing, Inc., 631 P.2d 622 (Idaho 1981), jurisdiction noted 454 U.S. 1140 (1982), appeal dismissed by Appellant U.S. Marketing, Inc., 455 U.S. 1009 (1982).

III. THE DALLAS SEXUALLY ORIENTED BUSINESS LICENSE ORDINANCE DOES NOT UNCONSTITUTIONALLY SINGLE OUT PERSONS AND BUSINESSES ENGAGED IN FIRST AMENDMENT ACTIVITIES FOR REGULATION CONTRARY TO ARCARA V. CLOUD BOOKS

Petitioners argue that because the Ordinance, especially its license provisions, singles out sexually oriented businesses, it is unconstitutional under the First Amendment. Petitioners primarily rely on their own characterization of Justice O'Connor's concurring opinion in Arcara

v. Cloud Books, Inc., supra.
Petitioners' argument is utterly without merit.

This Court has categorically resolved this issue against Petitioner. In Young v. American Mini Theatres, supra, the Court considered whether a classification based on the sexually explicit content of material sold at a certain location passed constitutional muster as a content-neutral time, place, and manner regulation.

"The principle question presented by this case is whether that statutory classification is unconstitutional because it is based on the content of communication protected by the First Amendment."

427 U.S. at 52. The Court upheld the classification based upon sexually explicit but protected speech. The Court ruled that "[r]easonable regulations of the time, place, and manner of protected speech, where those

regulations are necessary to further significant governmental interest, are permitted by the First Amendment." Id. at 63 n.18.⁷ In specifically addressing content-based licensing, the Court stated:

"The mere fact that the commercial exploitation of material protected by the First Amendment is subject to zoning and licensing requirements is not a sufficient reason for invalidating these ordinances."

Id. at 62 (emphasis added). The Court specifically held that the content of sexually explicit material could be the basis for separate classification and

⁷The Court cited Kovacs v. Cooper, 336 U.S. 77 (1948) (limitation on use of sound trucks); Cox v. Louisiana, 379 U.S. 559 (1965) (ban on demonstrations in or near a courthouse with the intent to obstruct justice); Grayned v. City of Rockford, 408 U.S. 104 (1972) (ban on willful making, on grounds adjacent to a school, of any noise which disturbs the good order of the school session).

...the ... are ...
...the ... are ...
...the ... are ...
...the ... are ...
...the ... are ...

...the ... are ...
...the ... are ...
...the ... are ...
...the ... are ...
...the ... are ...

...the ... are ...
...the ... are ...
...the ... are ...
...the ... are ...
...the ... are ...

...the ... are ...
...the ... are ...
...the ... are ...
...the ... are ...
...the ... are ...

treatment under a licensing and zoning statute.

"Even though the First Amendment protects communication in this area from total suppression, we hold that the State may legitimately use the content of these materials as the basis for placing them in a different classification from other motion pictures."

Id. at 70-71.

"[E]ven though the determination of whether a particular film fits that characterization turns on the nature of its content, we conclude that the city's interest in the present and future character of its neighborhoods adequately supports its classification of motion pictures."

Id. at 71.

In City of Renton, supra, the Court reaffirmed its holding in Young, ruling that a classification based upon the content of sexually explicit material does not violate the Equal Protection Clause. 475 U.S. at 55, n.4. The Court held that this type of classification is

a valid content-neutral time, place, and manner regulation because it serves a substantial governmental interest and is "justified without reference to the content of the regulated speech." Id. at 48, quoting Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 771 (1976).

Lower courts have followed the Supreme Court in upholding licensing of commercial establishments dealing in sexually oriented material. For example, Genusa v. City of Peoria, 619 F.2d 1203, 1212 (7th Cir. 1980), upheld a Peoria license ordinance making "it unlawful for anyone to operate an adult bookstore in Peoria without first obtaining a license." Under a constitutional challenge similar to the instant case, the Seventh Circuit held that "under Young v. American Mini Theatres, Inc., supra, 427 U.S. at

62-63, 96 S.Ct. at 2448, the requirement of a license is also constitutional."

It is rationally related to the goal of "inverse," or scatter zoning of adult uses; it provides both a method for authorities to enforce scatter zoning and means of assuring those who seek to open a new adult use of the legality of the proposed site.

Id. Similarly see Wall Distributors, Inc. v. City of Newport News, 782 F.2d 1165, 1171 (4th Cir. 1986); SDJ, Inc. v. City of Houston, 636 F.Supp. 1359, 1368 (N.D. Tex. 1986), aff'd 837 F.2d 1268 (5th Cir. 1988); O'Day v. King County, 749 P.2d 142 (Wash. 1988); Schope v. State, 647 S.W.2d 675 (Tex.Civ.App. 1982); Airport Bookstore, Inc v. Jackson, 248 S.Ed.2d 623 (Ga. 1978).

Finally, contrary to the contention of Petitioners, the fact that an ordinance applies to businesses of a particular type does not make it a content-based regulation, as this Court

stated in Young and City of Renton. The Ordinance is a valid legislative decision by the City to treat sexually oriented businesses differently because they have "markedly different effects upon their surroundings." Young, 427 U.S. at 82, n.6 (Powell, J., concurring).

IV. THE ORDINANCE PROVIDES ADEQUATE PROCEDURAL SAFEGUARDS AND IS CONSISTENT WITH THIS COURT'S DECISIONS

Petitioners argue that the Ordinance's procedural safeguards are inadequate to prevent the licensing requirements from acting as a prior restraint. This argument is without merit.

Petitioners contend that the Ordinance is governed by and fails to meet the standards of Freedman v. Maryland, 380 U.S. 51 (1965). However, Petitioners' assertion misses the mark

because the Freedman standard does not apply to a content-neutral statute such as the Dallas Ordinance. FW/PBS v. City of Dallas, 837 F.2d at 1303; Kev, Inc. v. Kitsap County, 793 F.2d 1053, 1060 (9th Cir. 1986); Bayside Enterprises, Inc. v. Carson, 470 F.Supp. 1140, 1149 (M.D. Fla. 1979). As noted by the court below, after the City of Renton decision, a content-neutral ordinance which regulates the effects of sexually oriented businesses without engaging in content-based regulation ". . . need only meet the standards applicable to time, place, and manner restrictions and need not comply with Freedman's more stringent limits on regulation aimed at content." FW/PBS, 837 F.2d at 1303.

As discussed previously, First Amendment protection for nonpornographic expression is greater than that afforded sexually explicit speech. City of

Renton, supra; Young, supra. Further, the actual issue here is the effect sexually oriented businesses have on their surroundings, not the content of the sexually explicit speech itself. This is contrasted with Freedman where the only issue was the explicit content of a particular film. What is being addressed here is not a particular movie; rather, it is the detrimental impact on surroundings caused by long-term sexually oriented commercial businesses.

The cases cited by Petitioners in support of their Freedman argument are easily distinguishable. Each of them involves content-based regulations whose only purpose was suppression of speech. The regulations involved in City of Paducah v. Investment Entertainment, 791 F.2d 463 (6th Cir. 1986), cert. denied 93 L.Ed.2d 290 (1986), and Entertainment

Concepts, Inc. v. Maciejewski, 631 F.2d 497 (7th Cir. 1980), cert. denied 450 U.S. 919 (1981), were local obscenity ordinances that called upon a city board to review particular films and make administrative findings of obscenity. In Freedman, the Maryland statute at issue actually required the films to be licensed, and directed the Board of Censors to deny licensure to films deemed "obscene, or such as tended, in the judgment of the Board, to debase or corrupt morals" Freedman v. Maryland, 380 U.S. at 52, n.2. The Dallas Ordinance is not a content-based statute, but is content-neutral and is designed to curb the harmful secondary effects of certain commercial businesses. It is not concerned with the content of expression itself.

Finally, even if this Court should find that the Freedman standard does

apply to content-neutral, time, place, and manner ordinances, the Dallas statutory scheme satisfies Freedman. As the District Court below held:

"The appeal, revocation, and suspension provisions are replete with procedural protections and reviewable standards, and comport with Freedman and fundamental tenets of due process."

Dumas v. City of Dallas, 648 F.Supp. at 1075.

copy of the report, and the
and the report, and the
statistical report, and the
the statistical report, and the

The report, and the
statistical report, and the
the statistical report, and the
the statistical report, and the
the statistical report, and the
the statistical report, and the
the statistical report, and the
the statistical report, and the

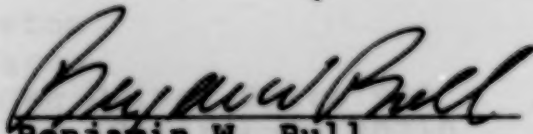
copy of the report, and the
and the report, and the
statistical report, and the
the statistical report, and the

CERTIFICATE OF SERVICE

V. CONCLUSION

For the foregoing reasons, this Court should uphold the Dallas Ordinance licensing provisions in their entirety.

Respectfully submitted,



Benjamin W. Bull
2845 E. Camelback Road
Suite 740
Phoenix, Arizona 85016
(602) 381-1322

Counsel for
Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief of Amicus Curiae Children's Legal Foundation have been sent by U.S. Mail, Postage Prepaid, on this 20th day of July, 1989, to:

John H. Weston
Weston & Sarno
433 N. Camden Drive, Suite 900
Beverly Hills, California 90210

Richard L. Wilson
902 Lee Road, Suite 30-450
Orlando, Florida 32810-5585

Arthur M. Schwartz, P.C.
Dominion Plaza
600-17th Street, Suite 2250S
Denver, Colorado 80202

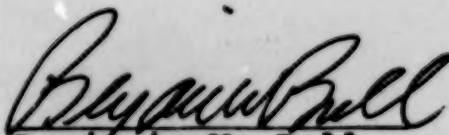
Frank P. Hernandez
5999 Summerside, Suite 101
Dallas, Texas 75252

Attorneys for Petitioners

Analeslie Muncy
Kenneth C. Dippel
Thomas P. Brandt
Office of the City Attorney
7BN City Hall
1500 Marilla Street
Dallas, Texas 75201

Attorneys for Respondent

All parties required to be served
have been served.

A handwritten signature in cursive script, appearing to read "Benjamin W. Bull".

Benjamin W. Bull
Counsel for
Amicus Curiae



APPENDIX A

TRANSCRIPTION OF VIDEOTAPE RELATING TO THE INTERIOR OF SEXUALLY ORIENTED BUSINESSES WITH ALAN SEARS, EXECUTIVE DIRECTOR OF CHILDREN'S LEGAL FOUNDATION AND DET. VINCENT RIZZITELLO, OF THE FT. LAUDERDALE POLICE DEPARTMENT, ORGANIZED CRIME DIVISION. (A copy of this video tape has been lodged with the Clerk of Court.)

Mr. Sears: We have a film that you brought from Florida with us today that we would like to take a quick look at. Vince, I would like you to tell the officers who are listening to this tape, I know there is a real different level of experience between those that are watching this tape, between those who have been deeply involved and who have briefly been involved. I would like you to tell us a little about what goes on in these porn outlets.

Det. Rizzitello: Basically, several years ago in one of our investigations, we got a court order to go inside one of



our adult bookstores and video the inside because we could not get a judge to go down and see it for himself so we wanted to represent to him exactly what the atmosphere was like.

What you are seeing now is the back room where the videos are played and the 8 mm movies and this is a marquee section. Basically, it shows films that are offered for viewing in each booth and the customer would go in, you can see there is about 150 films there, decide what film he wanted to view and then go to that particular numbered booth and drop his quarter so he could view about 2 minutes of that film.

Mr. Sears: Now, you have a lot of light in here for your television film. What is the normal situation in these back rooms.

the whole population and the
the whole population and the
the whole population and the
the whole population and the
the whole population and the

the whole population and the
the whole population and the
the whole population and the
the whole population and the
the whole population and the
the whole population and the
the whole population and the
the whole population and the
the whole population and the
the whole population and the

the whole population and the
the whole population and the
the whole population and the
the whole population and the
the whole population and the

Det. Rizzitello: The way that area was lit up was basically because of our camera that we had. Normally it is a black light atmosphere and you basically have to feel your way around this area. Again, these people knew we were coming so the patrons were removed and it is very sanitary right now. I wish I could bottle the smell or the feeling when you walk in there -- there is just no way of representing it on a piece of tape like this. That is why we wanted the judge to experience it but second best, we got a piece of film that we could have the judge look at and try to interpret it to him basically what these areas are. That they are really masturbation parlors.

Mr. Sears: And in addition to masturbation, other types of sexual activities take place.

Det. Rizzitello: Absolutely, these are the booth's doors, so once you leave the marquee, the patron would find a particular booth he was interested in.

Mr. Sears: This looks like a pretty good size place. What have we got 25 or 26 booths?

Det. Rizzitello: This has 50 booths. This is just one side of it. These booths on this side are mainly smaller booths where maybe one or two people could get in together and on the other side was called the group booths where you get 5 or 6 people. Right now you are looking at a long hallway shot. Normally, this is crowded with individuals going from one booth to the next booth.

Mr. Sears: What is this we are looking at now?

Det. Rizzitello: You are looking at the screen. This is the screen when the customer goes in, he closes the door and the film is shown on the screen. The stains you see on the wall are semen stains, there is no doubt. This is what people do, they go in there and watch a sexually explicit film, they masturbate or they participate in sex with someone else. That is exactly what they are for. These are not for connoisseurs of adult-type films who go in and critique them. This is raw sex.

Mr. Sears: What is this you are pointing to, this writing on the wall?

Det. Rizzitello: This is a normal technique used for advertising for

Mr. Smith: What is this we are looking
at now?

Mr. Smith: This is the looking at the
screen. This is the screen when the
picture goes in, he closes the door and
the film is shown to the women. The
screen you see on the wall are women
stains, there is no doubt. This is what
people do, they go in there and have a
sexually explicit film, they masturbate
or they participate in sex with someone
else. That is exactly what they are
for. There are no sex relationships of
any type like we in the outside
world. This is the way.

Mr. Smith: What is this you are
looking at, this writing on the wall?
Mr. Smith: This is a normal
technique used for advertising for

people to advertise their particular
perversion hoping someone will respond.
Again, the stains on the wall are the
evidence itself on what actually occurs
in these booths. The owners will claim
that all that occurs is movie viewing,
but they are cesspools.



APPENDIX B

Newscenter 13

Eau Claire, Wisconsin

(A copy of this video tape has been lodged with the Clerk of Court.)

Reporter: Tonight on "AIDS In A Small Town" we continue to tell you the story of a man we call Rick. Tonight the story is of a man spreading a virus.

Rick: I will never tell anyone what I have. That is kind of stupid.

Reporter: Why is that?

Rick: It kills your sex life.

Reporter: We have introduced to you a man we are calling Rick. Rick is homosexual, he lives in Eau Claire, and he carries the AIDS virus. What we haven't told you yet is that he claims

to be spreading the virus by having anonymous sex with other men. Does that bother you at all that you are spreading the disease?

Rick: No, I look at it as to the point that in riding in a car. If you get into a car with somebody and there is a seatbelt available to you and you don't use it and you get killed, whose fault is it? To a point I feel a little guilty but I always have condoms and if no one wants to use them or no one suggests it then hey, whose fault is it?

• • •

Harlan Heinz, Psychologist: It is not much different from the killer, the person who goes around murdering people without a conscience. I think that is a similar kind of lack of character

to be attending the place in which
the children are with their own
mother for all that you are attending
the children.

When we have seen the place
that we are in a way, it is not
like a day with nothing and there is a
certainly something to see and the
one is not the same thing as the
one is for a person's last of the
world and I think that there is
to be seen in the way of the
children's lives and the world is

There is a certain way of
the children's lives and the world is
the same way and the children's
lives are the same way and the
world is the same way and the
children's lives are the same way

development. I think that that is an exception. Some people who feel that they are going to die in a few years would have this attitude. But I think that's few, I think that's an exception and it is a person without a conscience or without any kind of feeling for the welfare of mankind.

§ § §

Dr. Michael Finkel: Anyone who continues to behave irresponsibly in such matters should have some sort of penalty. There should be some way that we can stop these people.

§ § §

Dr. Ken Alder: This is really distressing. I think that a person who does these things is very definitely a risk to other peoples' health.

Harlan Heinz, Psychologist: It is very difficult to treat a person like this and I think that basically you would not be able to cure this person. This mind would be very difficult to reach.

Reporter: Right now, Wisconsin has no law specifically against the spreading of AIDS. But there could be a law coming very soon.

Gov. Tommy Thompson: I don't know if we want to classify it as a felony but I am certainly looking at some sort of criminal sanctions.

Reporter: Can you get specific at all?

After being subjected to the
difficulties of a long journey
and I think that perhaps the world
is not so much as it seems. This
would be only difficult to read.

However, after the difficulty of
the journey, against the
of the world, the world is not
going very well.

For the journey, I am not
at all. It is a journey
certainly, but it is not
a journey.

A journey.

However, the journey is not

Gov. Tommy Thompson: We haven't really resolved or made a final decision on it. We are looking at a lot of legislation this year to protect the citizens...

#

Reporter: Rick says if Thompsons's administration gets a law approved restricting the spread of AIDS, he will obey it. But until then he will continue his lifestyle and that includes anonymous sex with other men.

Rick: How are you doing that, where all do you have sex?

Rick: Basically, I go to all the bookstores.

Reporter: Eau Claire's adult bookstores show adult movies inside private booths.

One. I say throughout the paper; really
needed or such a final decision as is
we are looking for a lot of legislation
that goes to govern the citizen.

Important. This says it. Thompson's
administration gets a law approved
concerning the removal of A.P.C. as well
that is. But what does he will
continue the legislation and that continues
legislation and that other one.

Now the job of the government is
to find out

What is the result of the law?

Therefore, the government's main business
is to find out what the law is doing.

Booths no larger than a small closet. But in many of the booths, there are small holes made in the walls. The holes are about waist high off of the floor.

Who do you meet in these rooms?

Rick: I have seen a few married men in there.

Reporter: Do you have most of your sex in adult bookstores?

Rick: Yeah.

Reporter: Is that the easiest way for you to have sex is through these holes?

Rick: Very easy.

#

Another no farther than a small river,
and a part of the harbor, there are
small hills near the water. The
hills are about half a mile off the

front

and no part is above ground

which is about half a mile off the
front

harbor. The part above ground is about
a mile off the front

which is about

harbor. The part above ground is about
a mile off the front

which is about

Reporter: You have a hole in one of your booths. Why is that hole there?

Bookstore owner: That hole was there when the booth came down here from Chicago. And it has been there ever since I have had that booth and I have had that booth there since 1984 when they came in here with all that stuff.

Reporter: Glen Peterson runs an adult bookstore in Eau Claire. The hole in one of the booths looks as if a knot of wood was punched out. Peterson said he has tried to block it twice but he has given up because it has been repeatedly removed. Today we told him Rick's story of spreading the virus.

Does that make you want to get rid of the hole more?

Important: The first rule is that you
must be honest. Why is that rule important?

Because honesty is the best policy. When you are honest,
you can build trust. Trust is the foundation of any
relationship. And if you don't have trust,
you can't have a good relationship. I have
seen many people who are dishonest. They
are always lying. They are always
saying one thing and doing another. They
are always trying to cheat. They are always
trying to get ahead. They are always trying to
win. They are always trying to be the best.

But honesty is the best policy. It is the only way
to build trust. It is the only way to have a
good relationship. It is the only way to win.
It is the only way to be the best. It is the
only way to be successful. It is the only way
to be happy. It is the only way to live.
It is the only way to be a good person.
It is the only way to be a good citizen.
It is the only way to be a good friend.
It is the only way to be a good parent.
It is the only way to be a good leader.

So, the first rule is that you must be honest.
Why is that rule important?

Bookstore owner: Yeah. I think that I will make sure I can patch this up good where they can't tear it down again because I don't want to get sued if somebody else catches AIDS over this. So I am going to have to take care of it today, I guess.

Reporter: And although it seems Glen Peterson knows what he is going to do, the City of Eau Claire sure doesn't seem to. City Attorney Ted Fischer says there is no ordinance on the books dealing with the issue at this time, though Milwaukee and St. Paul do. And Councilperson Wally Rogers says it may be up to the Health Board to take action but Health Board President Tom Henry says it might be up to the city to have an ordinance first. We will have more on that as our series continues.